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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

GILBERT MENDEZ,

Defendant and Appellant.

C070139

(Super. Ct. No. SF116520A)

Defendant Gilbert Mendez pleaded guilty to grossly negligent discharge of a firearm and admitted a prior serious felony conviction, in exchange for the dismissal of additional charges and a stipulated prison sentence. The trial court sentenced defendant to a stipulated term of six years, and imposed various fines and fees.

On appeal, defendant contends the abstract of judgment contains an erroneous reference to a \$20 restitution fund collection fee that was not part of the trial court's pronouncement of judgment. The People concede the error and agree that the fee should be stricken.

We agree with the parties. “When there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls. [Citations.]” (*People v. Walz* (2008) 160 Cal.App.4th 1364, 1367, fn. 3.) “The clerk cannot supplement the judgment the court actually pronounced by adding a provision to the minute order and the abstract of judgment. [Citation.] . . . [T]he clerk’s minutes must accurately reflect what occurred at the [sentencing] hearing.” (*People v. Zackery* (2007) 147 Cal.App.4th 380, 387-388.) If the clerk includes fines in the court’s minutes or the abstract of judgment that were not part of the oral pronouncement of sentence, those fines must be stricken from the minutes and the abstract of judgment. (*Id.* at pp. 387-389.)

DISPOSITION

The trial court is ordered to modify the minutes of sentencing and the abstract of judgment to omit any reference to the \$20 administrative surcharge for restitution fine -- restitution fund collection fee. The trial court is further directed to send a certified copy of the modified abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

RAYE, P. J.

We concur:

BLEASE, J.

HULL, J.